

Previous References

1928-29

Law

File No. 115-28

Serial Nos. 1-7

Later References

D

25

General and Revenue Secretariat.

Serial Nos. Seven

Part B for April 1930

SUBJECT

Excise Case of Embellishment by public servant

(1) The punishment given by the Magistrate is very disproportionate. He accused & convicted a person of an offence under S. 409 I.P.C.

Charge consists of 3 counts & all of them are proved, by the evidence of 20 more men.

The punishment is grossly inadequate and in fact it is no punishment at all. The Magistrate is not expected to make any promise to the accused or enter into any contract with him. The payment of money in such cases is immaterial, and that forms no criterion to fix the punishment.

(2) When I had a talk with the Magistrate about this case, he frankly admitted that the punishment was inadequate & stated further that he had no explanation to offer. He has none such so long as he is in which he tries to justify his decision by invoking the aid of S. 562 I.P.C., though he has no. at all admitted that

punishable with terms

this seems to be a fit case &
the H^{on} Magistrate to move the Chief
Court for enhanced punishment

P. M.
26/4

3rd member

(5) I quite agree - In a case in which
there is a misappropriation of
public servant to the extent of Rs. 100.
the Magistrate has given a punishment
of simple imprisonment to the
value of the Court a fine of Rs. 25.
This is very inadequate.

(6) In his explanation the Magistrate refers to the
principles of the new section 562
of the Cr. P. Code but he has
not acted under Sec. 562, &
he admits in his explanation that he
has not, and in fact that
section is not applicable to the
case at all.

(7) The Magistrate should be asked to
move the Chief Court to take up
the case in revision & enhance the
sentence.

(8) The (former) District Magistrate who received
the calendar report of judgment
has failed in his duty in not
bringing the case up before the Chief

Serial
No.

I am also surprised that they
has made the notice of the
Ex. Comr, who in the usual
course receives copy of the
judgment in these cases -

(9) Some notice will have to be
taken of the contents of the
draft, but this will have to
await the decision of the
Chief Court -

(10) Please submit this of the
second member of the Dewan
by
26/4/28

(11) I quite agree with ^{Pr. M.} 26/4
the 3rd member. The Comr. is
to be moved to enhance the sanction

^{CSK}
27/4/28
(12) Pr. M.
29-4-29 ^{Pr. M.} 29/4

(13) ^{Pr. M.} 29/4
Please make up draft of
the 3rd member. The Comr. is
to be moved to enhance the sanction

to TWO Indian put up

See)

2/30/4

17 3rd member

R. M.
20/4

in
30/4/29

R. M.
20/4
2/15

To Dt Magistrate
Tammur

P 6642 / 1.5.29

Calling for an explanation
for not taking action on the
Calendar.

To Dt Mag, Bangalore

P 6643 / 1.5.29

requesting that suitable
steps be taken to move the chob
for an enhancement of sentence

Office ^{DO.} put up

my

25.7
26/7

Issue under the Secy's supervision.

26/7

Issued R^r P 712/ 29.7.29.

^{2d} Two drafts put up. one D.O. R^r to Mr. Kebbikar & the other to D.M. Bangalore enquiring about the result of the ref ce to the Chief Ct.

my

26.11
27/11

Issue (under Secy's supervision)

27/11

Issued ^{2nd} R^r to D.M. Tumkur.

P 2905/ 27.11.29

1st R^r to D.M. Polare

P 2904/ 27.11.29

Letter no f. 12/53/28.29 dated 4th Dec. 29 from the D. Magistrate Bangalore forwarding copy of order passed by the Chief Ct. in the reference.

2) Subd for perusal. Kind refce is invited to the last para of the Indgt.

3rd member

SD P.M. 5/12

Please Issue a Remⁿ today

SD P.M. 9/12

SD A.S.R. 9/12

~~2nd~~
Rⁿ Put up

DDP
9/12

Issue
AM
9/12

N^o P 3061 of 10/12/29

Letter NO: 706402 dated 11.12.29
informing that the original letter is
misplaced & requesting copy of the same
as also the records of the Case from the
Dt mag. Bangalore.

23 One Draft forwarding copy of 706402 to an
Habitant and another to the Dt mag,
Bangalore requesting him to send to the
Habitant the Connected records put up
for orders.

DDP 24 The original letter was sub
12.12.29 m 15.29. The H^o Dt mag^{to} for
the attention to the two reminders m
m 29.7.29 & 27.11.29. And when the
2nd Remⁿ was sub he now says that
the original letter is misplaced. He
says nothing about the 2 reminders

to pay attention to the matter all the
he received his reminder & that
this is unsatisfactory

see
13/12/12
P. in
14/12

26 Two drafts are being

see
14/12

Secy) 27 Draft of I is under 2nd m
appt. Draft II is unnecessary
as it is referred to him by PB. Let members
directly from the D.C. Bangalore

2nd member

see
14/12
15/12

see
16/12/12
J. S. I

Ref 337610 of 20/12/12
see
23/12

Letter No. F.C. 7095/Dated 2. 12. 12
Mr. E.B. Hebbar intimating that he will
submit his report as soon as the records
are received from the D.C. Bangalore.

28 Submitted message with he awaited

The explⁿ called for from Mr Heblia
yet received - may be put up.

MP
18/1/30.
18/1/30
32

yes
18/1

Draft put up

MP
18/1/30
18/1/30

See)

33 I am

18/1

18/1

18/1

Issued P. 4211 Dated 11.2.19

(34) no reply is still received.
Further R^r put up for orders.

MP
18/1/30

(39) I am
18/1/30

5024 of 19.3.30

O.O. letter no. SR 28/29.30 dated 4
March 1930 from Mr G. B. Heblia
At map, unknown stating why he
could not move the Chief Court in
reference after the calendar was seen
by him.

(36) Submitted for orders - Refee
paras 8 and 9 above. The then

Magistrate Mr. Narayanasami Naidu's Expt
is flapped D. The order of the Chief Const
in the reference is flapped O. Mr. Heblitz
Explanation (P.U.D) is flapped R.

my
26.3.30
Am
10/3

Secy)

28/3

37 If expt was called for
from 18th May 1929, and but for
the Shriman's remarks I do not
think that the expt would have been
needed.

38 The expt does not seem to be satisfied

3rd member

D. M.
5/4
28/4

39 It is not necessary to pursue the
further, but I should like to know
what was the case of Mr. Heblitz
who was appointed back for him

28/4
9/4/30

40

C.B. has to furnish the
information

D. M.
9/4
10/4

my 41 To the depy, C.B. and Camps

10/4 Am
10/4

Mr Heblken was granted privilege leave for Seven days with effect from 2nd January 1929 with permission to avail himself of Sunday the 23rd December 1928 and Christmas and New Year Holidays from the 24th December 1928. He handed over Charge on 2nd December 1928 (afternoon) and resumed ^{charge} on 5th January 1929 (afternoon). having been recalled from leave

43
Mr T. Abdul Khader was placed in charge of the Bangalore District in addition to his own duties during the period (Vide Mtn No 3025/CB. 113-28-2 & 22-12-1928).

CPR
10/4
CPR

Supt. Protn. Br. with Compn)

Sued
AN
11/4

Ref. - Jan 39

See)

22
11/4

3rd Member

P. M.
11/4
11/4

11/4
11/4/8

11/4
11/4

11807/624
OFFICE OF THE DEPUTY COMMISSIONER, 1
BANGALORE DISTRICT.

D.O. No. J-1-4783/28-29

Dated, Bangalore, the 1st April 1929.

R2 2/4 129
What are the records?
Dear Sir,

With reference to your D.O. letter No. 571 dated 2nd March 1929 calling for a detailed report about an excise case of embezzlement by a public servant, I herewith send the records of the case which may be kindly returned when done with.

2. As regards the punishment I herein enclose in original the explanation of the City Magistrate.

Yours Sincerely,

A. S. S. S. S. S.

To

P. Mahadevayya, Esq., B.A., B.L.,
Law Secretary to the Government of Mysore,
Bangalore.

Recd put up.

Swad to Bureau

*3rd member with the Law Secy
preparation to answer? 25/4/29*

The City Magistrate,
Bangalore.

To

The District Magistrate,
Bangalore District,
Bangalore.

No. *1643*

Date. *28. 29*

Enc :-

*records will be sent
on a separate
packet.*

S I R,

With reference to your Office Memo No. J. I. 4783/28-

dated 27-3-1929, I have the honor to submit the records in Crim
Case No. 339 of 1927-28 and to state as follows :-

2. The case was disposed of on 20-12-1928 i.e. three
months ago, and the Calendar was duly submitted to the District
Magistrate who sent it to the Sessions Judge. Evidently they were
satisfied with the reasons given in para 11 of the Judgment,
(Typed copy is in the records) and neither of them called for
my explanation nor made a reference to the Chief Court to get
the sentence enhanced.

the amount misappropriated to the Deputy Commissioner.
the full amount of R^s 380 misappropriated to the Deputy
Commissioner. As he was a pauper, who had been proved to have
contracted several debts, I thought that it was better to
recover the Government dues and pass a lenient sentence as
there was no chance of recovering the amount from him after
passing the Judgment. So I sentenced him to undergo imprisonment
till the rising of the Court and to pay a fine of R^s 25/-. He
was, in effect, sentenced to pay a fine of R^s 380 + 25 = 405
which, under the circumstances was adequate.

The accused is an young man of 35 Years. He
had put in a service of Eleven Years. He lost his appointment
and his future has become uncertain. From 10-11-27 to 20-12-28
he must have suffered from Mental anxiety during the protracted
trial. He paid the full amount misappropriated and appealed
to Court for mercy. Under these circumstances the Court had
to take a lenient view.

~~was~~ dealt with under section 562. Cr. P. C. As the accused was more than 21, he could not be dealt with under section 562.

Cr. P. C. The Learned Sessions Judge, Bangalore Division, (in Criminal Appeal Nos. 63 and 114 of 1928-29) has more than once while considering the sentences of imprisonment passed by me even in cases of house breaking, drawn my attention to the fact that a sentence of imprisonment in case of a first offender " robs him of a wholesome fear of entering the precincts of the Jail, contaminates him by contact with hardened criminals and deprives him of whatever little self-respect he may have before entering the prison and that a Magistrate should give a first offender a chance to reform instead of branding him for ever as

I have the honor to be,

Sir,

Your most obedient servant,

G. Narayanaswamy
City Magistrate, *Kaid*
Bangalore.

SUBJECT.....

Diary No. of letter replied to.....

General and Revenue Secretariat

the

192

Date of issue.....

Signed by.....

Section

File No.

Serial No.

Sl. No.

To

Dear Sir,

It has come to the notice of Govt. that the Dy. Magistrate, Bangalore has passed sentence in a case in which G. Venkatarao, late Excise Head Clerk of the Dy. Commr's Office, Bangalore was prosecuted on a charge of committed breach of trust under S. 409, I.P.C. in the ordinary

List of enclosures.....

Copied by

Examined by

A simple imprisonment
in the case of the
Govt. of B.C.

~~Residence~~ of the Magistrate should
have attracted your attention
when you received the calendar
submitted by the Magistrate.
You should have ~~known~~ ~~necessarily~~
~~known~~ moved the ship out
to enhance the sentence. But
regret to observe that this action
which was clearly indicated in
the circumstances of the case,
was not taken and I am
desirous to request you to
submit your explanation for
the omission.

A copy of the judgment
in the case is enclosed herewith
for reference & return.

Yours sincerely

SUBJECT.....

Diary No. of letter replied to.....

General and Revenue Secretariat

the

192

Date of issue.....

Signed by.....

List of enclosures.....

Copied by

Examined by

Section

File No.

Serial No.

No.

To

Sir,

with reference to your
letter no. 21-4783-28-29
dated the 16- April 1929
forwarding the record relating
to C.C. no. 339 of 1927-28
on the file of the City Magistrate
Bangalore, I am directed
to request you to take
immediate steps to move
the Chief Justice to enforce
the sentence awarded by the
City Magistrate to the accused in
over

The record of ~~the~~ the
case as herein referred

Shawee. ^m 11/20/4

Lawley

CONFIDENTIAL.

FROM

A. K. SYED TAJ PEERAN, Esq., B.A.,
Deputy Commissioner,
Bangalore District.

TO

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government, Law Department,
& Legal Remembrancer, Bangalore.

SIR,

Subject :— Enhancement of punishment on the accused in C.
No. 399/27-28 (Government Vs. G. Venkata Rao) on the
City Magistrate's file, Bangalore.

9/2/29

new!

With reference to your letter No.P. 2904/Law. dated 27-1
on the above, I have the honor to enclose herein a copy of the order
Chief Court in Criminal Revision Case No.34 of 23-29 enhancing the
sentence.

I have the honour to be,

Your most obedient servant,

Subd for perusal

District Magistrate

5/2/29

M.L.A. 3rd Member

Handwritten notes and signatures at the bottom of the page, including "Subd for perusal" and "District Magistrate".

Before

Mr. Justice D. K. Rama Rao.

Criminal Revision Case No. 34 of 1928-29.

In the matter of a reference by the District Magistrate of Bangal
(received with his letter No-J.1.5753/28-29 dated 3rd May 1929), in th
case of G. Venkata Rao, accused in Criminal Case No. 339 of 1927-28 on the
file of the City Magistrate of Bangalore, forwarding for orders of Chief
Court records in the said case and recommending enhancement of sentence
as the one now awarded by the lower Court is quite inadequate for the
offence committed.

Offence under Section 409, I.P.C.

Heard;

Mr. S. Venkataputhaiya for accuse

Mr. M. Ramachandra Rao, Government Advocate
for Government.

framed against the accused only a single charge could have been framed as per Section 222, Cr. P.C. and the accused could have been given a single sentence. Under these circumstances I take a lenient view and sentence the accused to undergo simple imprisonment till the rising of the Court, under each count, the sentences to run concurrently and under the first count sentence him to pay a fine of twenty five rupees and direct that in default of payment of fine he should undergo rigorous imprisonment for 15 days.

It is thus seen that though the Magistrate refers to Section 222, Cr.P.C. as a reason in mitigation of the total punishment, he has given a sentence in respect of each Count. directed the sentences of imprisonment to run concurrently, and imposed in addition a fine of Rs 25/- in regard to the first count. It is therefore not correct to say as mentioned in the reference, that only a single sentence was awarded for all three counts.

The trial Magistrate in his explanation states that " the accused is a young man of 35 years. He had put in a service of 11 years. He lost his appointment and his future has become uncertain. From 10-11- to 20-12-1928 he must have suffered from mental anxiety during the proceedings trial. He paid the full amount misappropriated and appealed to Court mercy. Under these circumstances the Court had to take a lenient view

for 15 days in each case; as regards the first count the fine of Rs 25/- is increased to Rs 100/- with a default term of rigorous imprisonment for one month.

Sd/- D. K. Rama Rao,

JUDGE.

" C O P Y "



74 For District Magistrate,
Bangalore District.

285 p 8/1

D.O.No. Fe-6402 Office of the Deputy Commissioner,
Tumkur District.

Dated, Tumkur, the, 11th Decr:29.

3
12/12/29
12/12/29

Dear Sir,

MS

With reference to your D.O. reminder letter No. 3061 of the 9/10th instant calling for a report, as to why the Chief Court was not moved for enhancement of the sentence passed by the City Magistrate of Bangalore, on G. Venkata Rao, late Excise Head clerk of the Bangalore District Office, I write to state that your original letter seems to have been mixed up with some papers and I am tracing it, In the meanwhile, I request that a copy of the same may kindly be furnished and that the District Magistrate of the Bangalore District may be requested to send me the connected records.

Yours sincerely,

G. M. Heblikar

Dem Sir,

As request

D.O. No. 6402 dated the

instant I am desired

forward herewith a copy

my letter of the 16th Feb 1960

calling for your & management

the ~~original~~ ^{original} ~~and~~ ^{and}

the ~~bl. book~~ ^{bl. book} to enhance

the sentence ~~for~~

I am to point out

your failure to pay after

to the matter for over six months

of no reminders issued to you

~~accepted by~~ ~~sent to you in this department~~

satisfactory and to

instruct you to submit

the information required

without further delay.

Yours sincerely

With reference to your D. C. letter No. P. 3376/ of the 28/30th December 1929 forwarding a copy of your letter of the 1st May 1929 calling for a report as to why the Chief Court was not moved to enhance the sentence passed by the City Magistrate, Bangalore or Akata Rao, late Excise Head clerk of the Bangalore District Office, I write to state that the calendar and copy of judgment was received in the District office on 25th December 1928. I proceeded on privilege leave on 22nd December 1928 and Mr. T. Abdul Khader, District Excise Officer, was in charge of the District. I was recalled from leave in the first week of January 1929 in connection with the Viswaswaraya Committee's report and was very busy in preparing my report thereon. The subject under reference was not specially brought to my notice on return.

Yours sincerely,

S. M. Debbar